The order discharges itself by effluxion of time. The order becomes bereft of its validity, force and effectiveness at the end of the period specified in the order. It is then otiose. There is, however, no bar to another order being made by the Minister under section 8(1) of the Act if the Yang di Pertuan Agong is at the time of the making of the new order still satisfied of the various grounds and matters referred to in section 8(1) of the Act. The fact, however, remains that the order made by the Minister on the 22nd day of December 1966 was not an order made under section 8(1) of the Act. It might have been so made but it does not say so. Under those circumstances I cannot come to any finding other than what the order itself purports to show i.e. that it was made under section 8(1A) of the Act.

Section 8(1) and 8(1A) of our Act are the same as sections 8(1) and 8(1A) of the Singapore Internal Security Act 1960. In dealing with the case of *Lim Hock Siew & Ors. v. The Minister of the Interior & Defence.*[1] Wee Chong Jin C.J. said:—

"Under the Act, a person can only be detained initially for a period not exceeding two years, if the President is satisfied with respect to that person ..... Once the President is so satisfied then section 8(1)(a) requires the Minister charged with the responsibility for internal security to make an order directing that such person be detained accordingly. The making of an order of detention in respect of a person by the Minister under section 8(1)(a) is in my opinion merely the performance of an administrative function in compliance with an executive decision of the President that it is necessary to direct that the person be detained.

Next, section 8(1A) gives powers to continue the detention of a person detained under an order of detention after the expiration of the period of detention specified in the initial detention order, by giving the President the power to direct that the period of any order made under section 8(1)(a) be extended for a further period or periods not exceeding two years at a time. In clear and simple language the legislature has thus entrusted the power to continue the detention of a detainee to the President and not to the Minister and this is clearly in conformity with the power vested in the President alone by the legislature by section 8(1)(a) to retain a person in the first place.

In what manner then must the President make known to a detainee that he, the President, is directing that the period of his detention is extended for a further period of time? In my opinion, either by the President making the direction under his own hand or in accordance with the provisions of section 34 of the Interpretation Act 1965 ....."

The order (P1) made by the Minister is, according to its own tenor, not an order made by or at the direction of the Yang di-Pertuan Agong and is consequently not an effective order under section 8(1A) of the Act. The appeal is allowed and the order of the magistrate is set aside. Fine, if paid by the appellant, is to be refunded to him.

Appeal allowed.

Solicitors: *Lawrence, Joseph & Manuel.*

Re Estate of LEE PENG SAN, DECD. LAI YONG TIAM & ORS. v. YONG YUN CHOW & ORS.

[O.C.J. (Sharma J.) September 26, 1969]

[Malacca — Originating Summons No. 18 of 1969]

Executors and Administrators — Administration bond — Application for assignment of — Evidence that condition of bond has been broken — Probate and Administration Ordinance, 1959, ss. 35 & 37 — Probate and Administration Rules, 1961.

In this case an application was made for the assignment of the administration bond executed by the administratrices of the estate. The breach alleged by the plaintiffs was that the administratrices had sold a piece of land belonging to the estate for less than its assessed value. The administratrices had however obtained leave of the court for the sale.

Held: there was no *prima facie* evidence in this case of any breach of the conditions of the bond and therefore the application must be dismissed.

Cases referred to:—

(1) *In the Goods of Young* (1866) L.R. 1 P. & D. 186, 188.

(2) *Davey* v. *Edwards & Tappen* 162 E.R. 406 (408).

(3) *Baker & Marshman* v. *Brooks and Marshman* v. *Hughes* 164 E.R. 1183.

(4) *Dabendra Nath Dutt* v. *Administrator General of Bengal* I.L.R. 33 Cal. 713.

ORIGINATING SUMMONS

A.C. Vohrah for the plaintiffs.

S.C. Navaratnam for the 3rd and 4th defendants.

Cur. Adv. Vult.

Sharma J.: One Lee Peng San died on the 13th day of January 1964 and letters of administration to his estate were granted to his two widows Yong Yun Chow and Ng Ah Kheng who are the first and second defendants respectively in this originating summons. The net value of the estate of the deceased was assessed at $32,868.92 by the Collector of Estate Duty. On the 23rd day of March, 1965 the two administratrices and one Lim Siong and another Sim Chi Min executed the administration bond in favour of the Registrar in the usual Form 9 prescribed under the Probate and Administration Rules 1961. The said Lim Siong and Sim Chi Min are respectively the third and fourth defendants in this originating summons and are the sureties to the administration bond executed by the first and second defendants. The letters of administration to the estate of Lee Peng San (hereinafter referred to as the deceased) were extracted by the first and second defendants on the 23rd day of March, 1965.

Four separate suits were brought against the first two defendants as administratrices after they had extracted the letters of administration. These suits were for damages arising

out of the negligence of the deceased in driving motor vehicle MA 5736 on the 12th day of January 1964 when it met with an accident and the passengers in the said car which was owned by him sustained injuries. These injuries proved fatal to some of the passengers. These four suits were brought by the passengers who had survived and by the administrators of the estates of those passengers who succumbed to the injuries. The four suits were Malacca High Court Civil Suit Nos. 120, 95, 123 and 67 of 1965. The plaintiffs in these suits obtained judgments for $6,933, $4,000, $4,400 and $11,164 respectively in addition to costs. The plaintiffs in the present originating summons were the plaintiffs in those four suits.

The present application is for the assignment of the administration bond executed by the first two defendants. Section 37 of the Probate and Administration Ordinance 1959 provides for the assignment of an administration bond. It reads:—

"The court may, if it appears that the condition of an administration bond has been broken, order that it be assigned by the registrar to some named person, who shall thereupon be entitled to sue on the bond under his own name on behalf of all persons interested in the estate in respect of which the bond was executed, as though it had originally been made in his favour."

Before an administration bond can be assigned it must "*appear*" to the court that the condition of the bond has been broken. The use of the word "appears" in section 37 is not a synonym for "is suspected" but means that there is evidence which reveals or makes visible to the court that the condition of the bond has been broken. It signifies the existence of a state of things from which the court can form an opinion that there has been a breach of the obligation. The applicant should be able to make a *prima facie* case that the condition has been broken and should satisfy the court that the application is *bona fide*. Sir J.P. Wylde in the case of *In the Goods of Young*[1] said:—

"It means that the court ought to exercise its discretion by seeing that the application is *bona fide*, that a *prima facie* case is made out, and that the applicant is the proper person to whom the bond should be assigned."

In *Davey v. Edwards and Tappen*[2] Sir John Nicholl said:—

"But the question here, as I take it, is not properly the ultimate responsibility of the sureties; it is rather, generally speaking, the mere fact of whether the bond is or is not forfeited. In the latter case the sureties are clearly entitled to be dismissed; in the former, parties in distribution are as clearly, at least generally speaking, entitled to a sentence of this court, pronouncing for the forfeiture of the bond. The bond itself, pronounced to be forfeited, is to be put in suit, not here, but elsewhere; and there it is for the sureties to plead and prove, if they are capable of so doing, that the parties who put it in suit are still not in a condition to recover upon it. True it is that under circumstances the court might hesitate to pronounce a bond of this sort forfeited, although its conditions were shewn not to have been complied with. In other words, the parties seeking to put it in suit might be proved to have exonerated the sureties so incontestably and beyond any possibility of question, as to justify the court in declining to pronounce an administration-bond forfeited at their instance, although the mere fact of its being forfeited were ever so clearly established in evidence to the court. Still the rule laid down above as to the proper office of the court in this matter of administration-bonds will be found, I conceive, to apply in all ordinary cases.

Such, then, being the proper office of the court, the questions for my consideration in respect of this administration-bond are, first, whether, the bond itself is or is not *proved* to be forfeited; and, secondly, whether, being proved to be forfeited, the sureties are so clearly exonerated as to be entitled to a dismissal.

.....

Have, then, the sureties, the only other question, made out their exemption from liability so incontestably and beyond all question as to justify the court in declining to pronounce for the forfeiture of the bond? They have not so done, by any means, in my judgment, although, whether they are or are not in fact ultimately responsible, is a question, as I have already said, for another forum."

(Also see *Baker & Marshman v. Brooks, Marshman v. Hughes*[3] and *Dabendra Nath Dutt v. Administrator General of Bengal*[4]).

Under section 35 of the Probate and Administration Ordinance 1959, an administrator is required to give security for the due administration of the estate.

Sub-section (2) of section 35 provides that "The security shall ordinarily be by a bond in the prescribed form by the grantee and two sureties ....."

Rule 28(1) of the Probate and Administration Rules 1961 lays down the form of the bond. The form prescribed under the Rules no doubt requires the administrator within six months to exhibit in court an inventory containing a full and true estimate of all the property in possession etc. as also within one year to exhibit an account of the estate as specified in the condition to the bond but section 62 of the Probate and Administration Ordinance 1959 requires an administrator to exhibit such an inventory and account only "when lawfully required so to do". I am, in this case, fortunately spared the task of deciding whether a failure on the part of the administrator to exhibit an inventory and account constitutes a breach of the condition of the bond. It does, however, seem that while repealing the whole of the Probate and Administration Ordinance (Cap. 51) of the Straits Settlements and the Probate and Administration Enactment (Cap. 8) of the Federated Malay States, the form of the administration bond has remained unaltered as if there was no change whatsoever introduced in the repealing Ordinance as to the duty to

exhibit the inventory and the account. The relevant part of the bond as far as this application is concerned, reads as follows:—

"..... and do well and truly administer the said estate, property and credits according to law (that is to say) do pay the debts which the abovenamed deceased *did owe at his decease* ..... and pay unto such person or persons as shall be entitled thereto ....."

The breach alleged by the plaintiffs is that the administratrices had sold a piece of land (land held under Lease No. 14006 for Lot No. 485 Machap, Malacca) for $11,678 whereas the Collector of Estate Duty had assessed its value at $17,678. The administratrices, however, had on the 21st day of November 1966 in originating summons 50 of 1966 obtained leave of the court to sell and transfer this land for a sum of not less than $11,475. There is consequently no merit in that allegation of the plaintiffs. Whether there was any fraudulent preference by the administratrices in the payment of the debts of the deceased is a matter which is not before me. The bond speaks of the debts of the deceased at the time of his death. Judgments obtained by the plaintiffs were not debts subsisting at the date of the death of the deceased or even on the day the administration bond was executed by the defendants. The liability of the estate of the deceased to the plaintiffs had not as on that day either been determined by the court or as it seems ever asserted by the plaintiffs.

The complaint of the plaintiffs is that they have little prospects of recovery of the amount for which they have obtained judgments. I do sympathise with the plaintiffs. My duty, however, is to administer the law as it stands. In fact, the plaintiffs in Civil Suit Nos. 120, 95 and 123 of 1965 did obtain an order under Order 42 rule 32 of the Rules of Supreme Court for the examination of the first two defendants and the parties appeared before the Registrar in pursuance of that order on the 16th day of December 1967 and the 20th day of January 1968 when at the request of counsel for the plaintiffs in those suits the matter was adjourned *sine die.*

The affidavits filed in support of the application do not, to my mind, disclose any *prima facie* evidence of any breach of conditions of the bond by the first two defendants. The application is consequently dismissed with costs.

Application dismissed.

Solicitors: *Murphy & Dunbar; Koh Kim Leng & Co.*

COMPTROLLER OF INCOME TAX, MALAYA v. O.M.

[A.C.J. (Abdul Aziz J.) September 29, 1969]

[Kuala Lumpur — Civil Appeal No. 14 of 1968]

Income Tax — Deductions — Fares and rents — Income Tax Ordinance 1947, ss. 10(2) (a) & (c) and 14.

The comptroller appealed against the decision of the Board of Review which decided that for ascertaining the taxable income of the respondent for the year of assessment 1965-1966 a sum of $8,000 being passage expenses for the respondent and his family and the monthly rental of $800 in respect of a house occupied by the respondent should be deductible from the gross income.

Held, allowing the appeal: (1) the perquisities in the form of fares and rents could only be deducted if they fall within section 14 of the Income Tax Ordinance, 1947 and this must be decided on the basis whether they were "outgoings and expenses wholly and exclusively incurred during that period by such person in the production of the income";

(2) in this case the board was wrong in allowing the deductions for the fares and the rent.

Cases referred to:—

(1) *Cordy (H.M. Inspector of Taxes)* v. *Gordon* 9 T.C. 304.

(2) *Machon (H.M. Inspector of Taxes)* v. *McLoughlin* 11 T.C. 83.

CIVIL APPEAL

R. Padmanathan (Federal Counsel) for the appellant.

N.A. Marjoribanks for the respondent.

Cur. Adv. Vult.

Abdul Aziz J.: This is an appeal against the decision of the Income Tax Board of Review which reads:—

"*Judgment*

Appellant entitled to cost of 1st class passages.

As rental follow sec. 10(2)(c).

Each party to pay his own costs.

Sgd. Kam Woon Wah
Hew Kiang Main
Raja Kamaruddin."

The main ground of appeal is that the board erred in law in deciding that for ascertaining the taxable income of the respondent for the year of assessment 1965-1966 a sum of $8,000, being passage expenses for the respondent and his family and the monthly rental of $800 in respect of the house occupied by the respondent, should be deductible from the gross income.

The passage money and the house rents are regulated by a service contract, clause 2 of which reads as follows:—

"By way of remuneration the surgeon shall be entitled to all professional fees earned by him with a minimum of $5,000 per month which sum shall include:

(i) The cost of first class passages by sea or air for the surgeon, his wife and his children once in every 12 months; and